

purchase price of said property, a check of the court proceedings in the above entitled cases should be made in order to ascertain whether any judgments against The Broad Front Realty Company have been taken in said cases.

The taxes for the year 1930, amounting to one thousand three hundred twenty-three dollars and sixty-eight cents, are unpaid and are a lien upon said property.

There is likewise a balance of one hundred eighty dollars and eighty-six cents still due on the assessment on said property for the improvement of Broad Street. This assessment is likewise a lien upon the property.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

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3073.

APPROVAL, LEASE FOR RIGHT TO TAKE WATER FROM OHIO AND  
ERIE CANAL IN CUYAHOGA COUNTY, OHIO—THOMAS WILSON.

COLUMBUS, OHIO, March 21, 1931.

HON. A. T. CONNAR, *Superintendent of Public Works, Columbus, Ohio.*

DEAR SIR:—You have submitted for my examination and approval a certain lease in triplicate, executed by you as superintendent of public works on behalf of the state of Ohio, by which there are leased and demised to one Thomas Wilson of Bedford, Ohio, in consideration of an annual rental of two hundred dollars to be paid by him, the right to take from the level of the Ohio and Erie canal above Lock 37, in Cuyahoga County, so much of the surplus water introduced into the level of said canal as may not be needed for the lockage of boats and which is not now leased for manufacturing purposes, and also the right to use and occupy a parcel of canal land described in said lease for the purpose of enabling the above named lessee to use and enjoy the water power so leased.

The term of said lease, both with respect to the use of the water therein granted and the use and occupation of said parcel of land, is five years.

In this connection, it is noted that the lease of the parcel of land above referred to is made wholly as an instant to the lease of said water power, and that said grantee is given the right to use and occupy said parcel of land solely for the purpose of enabling him to use such water power. This fact is specifically mentioned for the reason that otherwise you would have no authority to lease canal lands for a term of five years.

Some question is suggested on consideration of the provisions of said lease as to whether the same are sufficiently certain with respect to the amount of water that the lessee is to be permitted to take under said lease. As to this, however, I am inclined to the view that inasmuch as the lessee is limited to the use of surplus water which may be introduced into the level of said canal at the point above indicated, which surplus water would otherwise flow from the canal, the suggested objection is obviated, and that said lease, considered as

a contract, is sufficiently definite and certain in its provisions to give rights to definite legal obligations on the part of the several parties to the contract.

Upon consideration of the provisions of said lease, I am of the opinion that the same are in substantial conformity with the provisions of sections 431 and 14009, General Code. I am accordingly hereby approving said lease, as to legality and form, and my approval is endorsed upon said lease and upon the duplicate and triplicate copies thereof, all of which are herewith returned.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3074.

TAXATION—WHAT IS CONSIDERED DOUBLE TAXATION—SECURITIES FOUND IN DECEDENT'S ESTATE—CERTIFICATES OF PARTICIPATION IN FIRST MORTGAGE LOANS ONLY CONSTITUTE AN EQUITABLE INTEREST.

**SYLLABUS:**

*Section 2 of article XII of the constitution of the state, as in force in the year 1930 and prior years, requiring all property to be taxed by uniform rule, was an implied prohibition against the double taxation of property in this state. And the shares or interests represented by certificates of participation issued against first mortgage notes and the income thereof in the hands of a trustee are not taxable in this state to the owner or holder of such certificates of participation, where said first mortgage notes and the income thereof constituting the corpus of the trust fund are taxable in the hands of a trustee residing and administering said trust in this state.*

COLUMBUS, OHIO, March 21, 1931.

HON. JAMES M. AUNGST, *Prosecuting Attorney, Canton, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication which reads as follows:

"I would appreciate having your opinion upon a question which has been submitted to my office by the taxing authorities of this county.

During her lifetime a decedent owned a number of Certificates of Participation in First Mortgage Loans, these certificates being a part of an issue put out by the Canton Bank and Trust Company. These securities, along with others, were set forth in the inventory of her estate. The taxing authorities were inclined to list these securities for taxation for a number of years back, inasmuch as decedent had not returned them for taxation. The executors are claiming that the certificates are not taxable, on the theory that they represent a mere equitable interest in mortgages owned by and taxable if at all, in the hands of the issuing bank,—that is that they are somewhat akin to Land Trust Certificates which are not taxable because they represent merely an undivided interest in property which is itself otherwise taxed.

The certificates in question are issued under a declaration of trust